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No. 14-981

In the Supreme Court of the United States

ABIGAIL NOEL FISHER,
Petitioner,

v.

THE UNIVERSITY OF TEXAS AT AUSTIN, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF TEACH FOR AMERICA, METROPOLITAN COUNCIL FOR EDUCATIONAL OPPORTUNITY INC., THE CALHOUN SCHOOL, CITY AND COUNTRY SCHOOL AND K-12 EDUCATORS EVE KLEGER, MICHÈLE SOLÁ, JANE MOULDING, PATRICIA HAYOT, ERICA CORBIN, DIANA SCHLESINGER, CARA SURICO, SCOTT REISINGER, NAMITA TOLIA, ARVIND GROVER, SAM CHALTAIN, MORIKA TSUJIMURA AND JENNIFER CHEN AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are K-12 educators, institutions and grant programs, whose work and mission will be greatly impacted by a ruling restricting the use of race in admissions programs.

Teach For America is a nonprofit national teacher corps of recent college graduates who commit two years to teach and to effect change in under-resourced public schools. Teach For America's mission is to enlist, develop and mobilize a group of our nation's most promising future leaders to grow and strengthen the movement for educational equity. As one of our nation's leading recruiters of teachers of

[1] Pursuant to the Court's Rule 37.3(a), all parties have consented to the filing of this brief by filing blanket consents with the Clerk. Pursuant to Rule 37.6, Amici affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, their members or their counsel made a monetary contribution intended to fund its preparation or submission.

color for public schools, Teach For America has an interest in the maintenance of a national higher education system that produces talented, diverse graduates.

The Metropolitan Council for Educational Opportunity Program ("METCO") is a grant program funded by the Commonwealth of Massachusetts, whose goal is to expand educational opportunities, increase diversity and reduce racial isolation by permitting students in racially isolated cities to attend public schools in more integrated communities. METCO pursues its goal through a school choice program and a purposeful school desegregation program. The school choice program provides 3300 students who live in Boston and Springfield access to smoothly functioning, often affluent schools that enjoy reputations for academic excellence and rigor. The purposeful school desegregation program provides the students and the receiving district with concomitant opportunities to enrich the education experience and prepare racially diverse candidates for admission to colleges, universities and the inevitable racially and culturally diverse society their student bodies are destined to enter.[2]

The Calhoun School is an independent coeducational college preparatory school located in New York City's Upper West Side. Its mission is to deliver the most powerful and forward-thinking education, which is rooted in its commitment to filling its classrooms with the voices and conversations of a culturally rich community. The Calhoun School strives to

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[2] Additionally, METCO, Inc. handles registration and referral of students, and also offers academic counseling, tutorial services, summer school and other support services to participating students.

build a community representative of the rich diversity of human experience that is also deeply influenced by the values of inclusion, equity and justice. Accordingly, the teachers and students at Calhoun reflect the rich diversity of New York City. The Calhoun School believes learning is rooted in meaningful relationships. Whether it is the advisory system, the classroom or community time, teachers and students from diverse backgrounds create an environment of shared responsibility in which critical thinking skills are sharpened. In all aspects of the community, the Calhoun School emphasizes the value of having many diverse viewpoints co-creating the conversations that form the powerful network of learning that happens at Calhoun.

City and Country School is an independent coeducational pre-K and elementary school located in New York City's Greenwich Village. City and Country School believes that separate heritages, beliefs and choices of expression help to define us as individuals and that commitment to learning about one another and the larger world unites the school as a community. City and Country School recognizes and respects the fact that diversity exists in the languages we speak, the colors of our skin, our genders, ages and sexual orientations, the traditions we observe, the configurations of our families, the financial and educational resources in our families and the special needs we may have.

Eve Kleger is Head of School at the Village Community School, a position she has held since 1996. The Village Community School is an independent coeducational lower and middle school located in New York City's West Village. The Village Community School is strengthened and enriched by the diversity of it students, families and staff, and is

committed to cultivating intellectual, social and emotional growth in an inclusive environment where diverse experiences and perspectives are essential to a rigorous education.

Michèle Solá is the Director of Manhattan Country School, a position she has held since 1997. Manhattan Country School is a private coeducational school for pre-K through eighth grade located in New York City's Upper East Side and a farm in Roxbury, New York. Manhattan Country School teaches students in a community with no racial majority and broad economic diversity. The varied backgrounds and experiences of Manhattan Country School's students are integral to a curriculum that takes full advantage of the multiracial, multicultural and economic diversity of its community.

Jane Moulding is Head of School at the Cambridge School of Weston, a position she has held since 2002. The Cambridge School of Weston is a private coeducational day and boarding high school located in Weston, Massachusetts. The Cambridge School of Weston's core mission is to enable its students to become thoughtful, creative, socially responsible, healthy adults. To that end, the Cambridge School of Weston welcomes the perspectives of different ethnicities, races, classes, religions and sexual orientations that enhance the community's mutual understanding.

Patricia Hayot is Head of School, a position she has held since 2003, and Erica Corbin is Director of Community Life and Diversity, a position she has held since 2015, at the Chapin School. The Chapin School is an independent K-12 school for young women located in New York City's Upper East Side. The Chapin School prepares a diverse and talented

community of young women to thrive and lead in a global society through its dedication to academic excellence, personal integrity and community responsibility. Believing that an equitable, inclusive community is essential to learning, Chapin actively seeks families, faculty and staff who bring a range of experiences to the school. The Community Life and Diversity Council is responsible for examining diversity across a multitude of social identifiers—that include but are not limited to—age, ethnicity, gender, learning style, physical ability, race, religion, sexual orientation and socioeconomic class within the Chapin community.

Diana Schlesinger is the School Director and Founder, a position she has held since 2008, and Cara Surico is a dance and movement teacher at Greene Hill School. Greene Hill School is an independent coeducational lower and middle school located in Brooklyn's Fort Greene. Greene Hill School is dedicated to achieving a racially and economically diverse balance of children and families that is representative of the rich cultural and socioeconomic community in which the school resides.

Scott Reisinger is Head of School at the Trevor Day School, a position he has held since 2014. The Trevor Day School is an independent coeducational college preparatory K-12 school in Manhattan. The Trevor Day School celebrates diversity of thought, experiences and culture and develops in children a recognition of their own unique potential as lifelong learners and leaders who act as responsible global citizens in our world.

Namita Tolia is the lower school principal at the Little Red Schoolhouse and Elisabeth Irwin High School, a position she has held since 2008. The Little

Red Schoolhouse and Elisabeth Irwin High School is an independent coeducation K-12 school located in New York City's West Village. The Little Red Schoolhouse and Elisabeth Irwin High School believes that an environment comprised of people with different backgrounds, talents and beliefs enriches our lives and helps us continue to challenge our perspectives as individuals and as a school.

Arvind Grover is Dean of Faculty at the Grace Church School, a position he has held since 2011. The Grace Church School is an independent coeducational K-12 school located in New York City's East Village. The Grace Church School strives to nurture students' steady, affectionate trust in themselves and their world, which is made resilient by the interaction of different ethnic, religious and socioeconomic influences.

Sam Chaltain is an education activist, author, PBS producer and CNN correspondent. Previously, he was the National Director of the Forum for Education and Democracy, an education advocacy organization and the founding director of the Five Freedoms Project, a national program that helps K-12 educators create more democratic learning communities, in which diversity is a crucial factor.

Morika Tsujimura has been a seventh grade math and science teacher at the Bank Street School for Children since 2012. The Bank Street School for Children is an independent coeducational school located in New York City's Upper West Side. The Bank Street School seeks to nurture the intellectual, social and emotional lives of its students by deliberately creating a community that is broadly inclusive and reflects the diversity of our multicultural society.

Jennifer Chen has been an English teacher at Rye Country Day since 2011. Rye Country Day School is an independent coeducational college preparatory school located in Rye, New York. Rye Country Day School is committed to creating and sustaining a school community that is diverse and inclusive, one in which all members can participate fully and maximize their potential as part of its proactive approach to teaching students the importance of diversity and inclusion in an increasingly interconnected, multicultural and ever-changing world.

INTRODUCTION AND SUMMARY OF ARGUMENT

Over 60 years since this Court outlawed segregation in public schools, and following a wave of court orders forcing schools to integrate, many parts of the country are still plagued with poor performing, racially segregated K-12 schools. Texas, whose Ten Percent Plan is dependent on this segregation for its recruitment of minorities, is only one example. Experience in other school districts has shown that "while segregation as it is practiced today may be different than it was 60 years ago, it is no less pernicious: [. . .] it involves the removal and isolation of poor [B]lack and Latino students, in particular from everyone else."[3] The result is a cluster of schools in poor communities all over the country "that looks as if *Brown v. Board of Education* never happened."[4]

As this Court recognized in *Brown*, "education is perhaps the most important function of state and local governments." *Brown v. Bd. of Ed.*, 347 U.S. 483

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[3] Nikole Hannah-Jones, *Segregation Now*, ProPublica (Apr. 16, 2014), https://www.propublica.org/article/segregation-now-the-resegregation-of-americas-schools/#intro

[4] *Id.*

(1954). The compelling interest in a diverse learning environment that this Court recognized in *Grutter v. Bollinger*, 539 U.S. 306 (2003) is just as crucial at the K-12 level. Meaningful interaction with diverse groups during the formative years not only results in better cross-cultural relationships, but also improved academic performance and a greater likelihood of breaking out of the cycle of poverty for minorities.

Because lower courts will inevitably look to this Court's decision in evaluating challenges to K-12 admissions policies and because this Court's opinions ostensibly shape sòcial attitudes, a ruling that limits the ability of universities to consider race in their admissions policies to "increase diversity ... [as] a necessary part of progress to transcend the stigma of past racism" will significantly impair *amici*'s ability to fulfill their educational mission. *See Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. By Any Means Necessary (BAMN)*, 134 S. Ct. 1623, 1638 (2014).

Yet, race must be a part of any meaningful holistic evaluation of a student. Purportedly race-neutral alternatives, such as class-based affirmative action, ignore the experiences of minorities that are separate from, and cannot be remedied by, wealth. Neither is relying on a ten percent plan sufficient to achieve meaningful diversity, because such programs have been shown to result in a significant decline in minority enrollment at selective universities. Moreover, race-neutral strategies, while purporting to ignore race, are inevitably biased against Blacks and Hispanics. Thus, a holistic approach that considers race, such as Respondent's admissions policy, is most consistent with this Court's directive to consider each student's background and experiences individually in order to achieve meaningful diversity. By creating

multidimensional diversity, Respondent's approach helps break down stereotypes and reflects the reality that members of the same racial group have varying experiences and viewpoints.

Moreover, purportedly race-neutral university admissions policies decrease the quality of education at the K-12 level. First, alternatives like the Ten Percent Plan are dependent on and promote segregation. Second, they discourage minorities from attending high performing, racially integrated K-12 schools, where they are forced to compete with better equipped White students for limited spots in selective universities. Third, they encourage perverse incentives for students to transfer to poor performing schools to displace what would have been the top ten percent of minorities admitted to selective universities. Finally, a decline in minority students entering selective universities will diminish the pool of minority teachers at the K-12 level, who contribute significantly to the quality of education in diverse classrooms.

ARGUMENT

I. A DECISION RESTRICTING UNIVERSITIES FROM CONSIDERING RACE WILL HINDER K-12 SCHOOLS FROM FULFILLING THEIR MISSION

A diverse learning environment is as important to K-12 schools as it is to universities. During the formative years, meaningful interaction with a diverse group improves students' academic outcomes while supporting their psychosocial development. A decision limiting constitutionally permissible means to promote diversity at the university level will re-

strict the ability of K-12 schools to create diverse learning environments as lower courts, local governments and K-12 administrators look to this Court's opinion for guidance in evaluating and implementing K-12 programs.

A. A Diverse Learning Environment Is Essential To K-12 Schools

This Court in *Brown v. Board of Education* underscored the important role of K-12 education in preparing students for "performance of our most basic public responsibilities," providing students with "the very foundation of good citizenship[,]" and serving as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training and in helping him to adjust normally to his environment." *Brown v. Bd. of Ed.*, 347 U.S. 483, 493, (1954) *supplemented* 349 U.S. 294 (1955).[5] As *Brown* recognized, education at the K-12 level has a cascading impact throughout American society, because K-12 schools are the beginning of an educational pipeline that flows into higher education, the workforce and leadership positions in our democratic society. Thus, at the K-12 level, "a district may consider it a compelling interest to achieve a diverse student population" because a "compelling interest exists in *avoiding racial isolation*[.]" *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797-98 (2007) (Kennedy, J., concurring) (emphasis added).

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[5] *See also Grutter v. Bollinger*, 539 U.S. at 331 (highlighting how the Court has embraced "the ***overriding importance of preparing students for work and citizenship***, describing education as pivotal to 'sustaining our political and cultural heritage' with a fundamental role in ***maintaining the fabric of society***") (quoting *Plyler v. Doe*, 457 U.S. 202, 221 (1982)) (emphasis added).

The benefits of a diverse learning environment clearly extend beyond the university setting. As foundations for good citizenship and the springboard for future cultural awareness, K-12 institutions benefit from diverse student bodies at least as much as institutions of higher learning. As this Court has repeatedly acknowledged, "[*n*]*othing less than the 'nation's future depends upon leaders trained through the wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples.*" *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (quoting *Keyishian v. Bd. of Regents of Univ. of N. Y.*, 385 U.S. 589, 603 (1967)) (emphasis added). Furthermore, the Court recently reaffirmed that "attainment of a diverse student body . . . *serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes.*" *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411, 2418 (2013) (emphasis added). A wealth of educational, social and behavioral science research chronicles the positive effects of K-12 diversity: "Students who attend racially and socioeconomically diverse schools are more likely to achieve higher tests scores and better grades, to graduate from high school and to attend and graduate from college compared with their otherwise comparable counterparts who attend schools with high concentrations of low-income and/or disadvantaged minority youth." Roslyn Arlin Michelson & Mokubung Nkomo, *Integrated Schooling, Life Course Outcomes, and Social Cohesion in Multiethnic Democratic Societies*, 36 Rev. of Res. in Educ., 226 (Mar. 2012) (examining the effects of diversity in K-12 schools); *see also* Eric A. Hanushek et al., *New Evidence about Brown v. Board of Education: The Complex Effects of School Racial Composition on Achievement*, 27 J. of Lab. Econ. 3 (2009) (finding a

statistically significant relationship between diminishing racial concentration and improved academic outcomes in K-12 schools in Texas). Moreover, children in diverse schools are more likely to develop cross-ethnic friendships, which have "positive psychosocial consequences, which include better social adjustment and more positive attitudes towards ethnic out-groups." Philipp Jugert & Allard R. Feddes, *Children's and Adolescents' Cross-Ethnic Friendships* 16, ResearchGate (Oct. 2015).[6] These improved attitudes involve "greater identification with the out-group as well as more empathy and trust towards the out-group." *Id.*

In their long histories of providing and fostering diverse K-12 learning environments, Teach For America, METCO, the Calhoun School, City and Country School and the individual educator *amici* have observed the benefits of diversity firsthand. They have watched time and time again how students from different backgrounds enhance each other's academic, psychological and social development. *Amici* have sent their graduates off to college with not only competitive academic credentials, but also with valuable perspectives on American society and the barriers of race. Fulfillment of each of *amici*'s missions depends on the continued ability to assemble and educate a diverse group of students.

B. This Court's Decision Will Impact Diversity at the K-12 Level

Lower courts and school administrators, such as *amici*, will look to this decision in ruling on and implementing policies that promote diversity in K-12 schools. *See, e.g., Parents Involved in Cmty. Sch.*, 551 U.S. at 724 ("Prior to *Grutter*, the courts of ap-

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[6] http://www.researchgate.net/publication/282641105

peals rejected as unconstitutional attempts to implement race-based assignment plans—such as the plans at issue here—in primary and secondary schools. ... After *Grutter*, however, the two Courts of Appeals in these cases, and one other, found that race-based assignments were permissible at the K-12 level, largely in reliance on that case.").

In addition, this Court's decision will shape social attitudes about race and diversity. *See, e.g.*, Rosalee A. Clawson et al., *The Legitimacy-Conferring Authority of the U.S. Supreme Court An Experimental Design*, 29 Am. Pol. Res. 566 (2001)[7] (concluding the Supreme Court plays an important role in shaping public opinion and political behavior"); *see generally* Robert A. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker*, 6 J. Pub. L. 279 (1957). Thus, even assuming that lower courts will narrowly construe the Court's ruling as limiting the consideration of race only at selective public universities, the signal of disapproval from the Court will create practical obstacles for K-12 schools and programs, like Teach For America, METCO, the Calhoun School and City and Country School. For example, in the wake of the divided *Parents Involved* decision, misinformation and uncertainty, "coupled with the difficulty associated with altering community views enough to elect a school board majority committed to an integration plan, and the very real possibility that an upset parent [could] initiate expensive and potentially successful litigation if a plan [was] adopted," resulted in a significant decline in communities' efforts to pursue integration. *See* Erwin Chemerinsky, *Making Schools More Separate and Unequal: Parents Involved in Community*

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[7] http://www.corwin.com/upm-data/2669_11apr01.pdf#page=35

Schools v. Seattle School District No. 1, 2014 Mich. St. L. Rev. 633, 642 (2014); *see also* Adai Tefera et al., *School Integration Efforts Three Years After "Parents Involved"* The Civ. Rts Project/Proyecto Derechos Civ. (June 28, 2010)[8] (describing how the "divided [Parents Involved] decision confused many educators about what did remain legally permissible"); Roger Clegg, *A Good If Mixed Bag*, Nat'l Rev. (July 5, 2007)[9] (predicting that, after *Parents Involved*, "[s]chool-board members across the country will pick up the paper and read what the Court did, and they will conclude that using skin color to determine school assignments is a bad idea").

As the public reaction to *Parents Involved* illustrates, a decision eliminating the consideration of race from college admissions policies will undermine the efforts of the Teach For America, METCO, the Calhoun School, City and Country School and the individual educator *amici* to promote and champion diverse K-12 learning environments. Additionally, such a decision will motivate political opposition to the state-funding mechanism that supports METCO.

Finally, overturning Respondents' admissions plan risks chilling vibrant public debates about eliminating racial segregation in schools. Over the past 25 years, racial segregation of K-12 schools has persisted at fairly high levels[10] "as local school districts

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8 http://civilrightsproject.ucla.edu/legal-developments/court-decisions/school-integration-efforts-three-years-after-parents-involved/teferea-school-integration-three-years-after.pdf

9 http://www.nationalreview.com/article/221502/good-if-mixed-bag-roger-clegg

10 *See generally* Gary Orfield & Chungmei Lee, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies.* The Civ. Rts Project/Proyecto Derechos Civ., (2007), http://civilrightsproject.ucla.edu/research/k-12-

continue to grapple with legal and economic constraints on policies that are aimed at creating diverse schools."[11] Communities—parents, activists, media outlets and voters—regularly mobilize in efforts to preserve, promote or do away with student assignment plans seeking to achieve diverse schools. *Id.* Observers have witnessed community sentiments running

> the gamut, from points west like Seattle, Washington, where parents reacted somewhat negatively to a new, neighborhood-based assignment plan to midwestern Chicago where activists and the local media opposed the school's race-neutral magnet admissions criteria, all the way to the eastern seaboard city of Wilmington, Delaware where members of the [B]lack community marched for more local control of schools.

Id. (internal citations omitted).[12] Stifling these debates limits the ability of local school boards and

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education/integration-and-diversity/historic-reversals-accelerating-resegregation-and-the-need-for-new-integration-strategies-1/orfield-historic-reversals-accelerating.pdf; *see also* Edward Glaeser & Jacob Vigdor, *The End of the Segregated Century: Racial Separation in America's Neighborhoods, 1890–2010.* Civ. Rep. No. 66. Manhattan Inst. (2012), http://www.manhattaninstitute.org/pdf/cr_66.pdf.

[11] Tefera et al., *supra*

[12] Additionally, elite selective public high schools across the nation continue debating how to design admission policies that maximize their strongly related goals of diversity and academic achievement. *See generally* Katrina Shakarian, *Remaining Elite, Ensuring Diversity: Boston, Chicago & New York Wrestle with Admissions to Special High Schools,* Gotham Gazette

administrators, such as *amici*, to experiment with flexible approaches to expose students to diverse learning environments from the earliest possible age.

II. ALTERNATIVE ADMISSIONS STRATEGIES THAT IGNORE RACE FAIL TO ACHIEVE MEANINGFUL DIVERSITY IN K-12 SCHOOLS

Purportedly race-neutral admission policies, such as class-based affirmative action or Texas' Ten Percent Plan, fail to promote the multidimensional diversity that this Court has deemed a compelling interest. First, admissions programs that focus on socioeconomic status alone fail to account for experiences of racial and ethnic minorities—such as low social mobility and persistent racial discrimination—that are independent of, and cannot be remedied by, wealth. Second, admissions programs that ignore race have been unsuccessful in creating an adequately diverse class. Third, purportedly race-neutral or

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(Nov. 11, 2014), http://www.gothamgazette.com/index.php/government/5430-remaining-elite-ensuring-diversity-boston-chicago-a-new-york-wrestle-with-admissions-to-special-high-schools. In New York, Mayor de Blasio spoke as a candidate and since taking office about altering admission policies to improve diversity at the city's selective public schools. *Id.* "In July 2014, Chicago legislators held a hearing to examine the declining numbers of [B]lack students at the highest ranking of [Chicago Public Schools'] selective enrollment high schools." *Id.* Similarly, Boston and Fairfax County face concerns that their selective public schools lack diversity. *Id.*; *see also* Jay Mathews, *Top high school should look for character as well as brains*, Wash. Post: Class Struggle (Nov. 7, 2010), http://voices.washingtonpost.com/class-struggle/2010/11/top_high_school_should_look_fo.html.

objective admissions factors, such as standardized test scores, GPA and high school curriculum, are in fact plagued by racial biases. Finally, admissions programs, such as the Ten Percent Plan, that focus only on admitting minority students from racially isolated, poor-performing schools fail to achieve meaningful diversity. Multidimensional diversity, which consists of a broad array of perspectives, interests and experiences, requires admissions programs to consider how each applicant can contribute to diversity in the school's community and race, which heavily shapes a person's consciousness and outlook, is a significant part of this equation.

A. A Class-Based Approach to Diversity Ignores the Effects of Race That Are Independent of Socioeconomic Status

"Race-neutral" strategies, such as the class-based affirmative action advocated by Richard D. Kahlenberg, Richard Sander and Stuart Taylor, will not remedy the persistent effects of discrimination, which this Court recognized as a compelling interest. First, because many effects of discrimination are independent of socioeconomic status, race-neutral strategies will continue to result in the underrepresentation of Black and Hispanic students. Second, class-based remedies depend on and exacerbate the disparities that flow from persistent discrimination, while continuing to promulgate the stereotype that Blacks and Hispanics are inferior. Class-based affirmative action thus undermines application of the meaningful, narrow remedies this Court endorsed in *Grutter* to address the compelling interest of educational diversity. *See Grutter v. Bollinger*, 539 U.S. at 343.

While America's history of systemic racial discrimination—particularly against Black Americans—and persisting racial disparities have forged a significant connection between race and poverty,[13] certain additional inequalities faced by racial minorities are independent of socioeconomic class.[14] For example, Black Americans experience significantly greater barriers in social mobility than Whites from comparable economic backgrounds. As one study has shown, race hinders social mobility for Black Americans in a way that it does not for White Americans: The same group of households, measured over a twenty-five year period, found that the wealth gap between White and Black families nearly tripled. Thomas Shapiro et al., *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Inst. on Assets & Soc. Pol'y (Feb. 2013) (noting that the wealth gap between White and Black families increased "from $85,000 in 1984 to $236,500 in 2009").

Furthermore, the majority of Black middle class children are downwardly mobile, Black families are

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[13] Sandra S. Smith & Mignon R. Moore, *Intraracial Diversity and Relations Among African-Americans: Closeness Among Black Students at a Predominantly White University*, 106 Am. J. Socio. 1 (July 2000) (discussing the historical connection between race and poverty); *The Colors of Poverty: Why Racial & Ethnic Disparities* Persist, Nat'l Poverty Ctr. Pol'y Br. (Jan. 2009) ("Racial disparities in poverty result from cumulative disadvantage over the life course, as the effects of hardship in one domain spill over into other domains."), http://www.npc.umich.edu/publications/policy_briefs/brief16/PolicyBrief16.pdf.

[14] For example, while being poor in America can be remedied with wealth, being Black in America is to experience present and historic disadvantages that persist independent of economic status.

more likely to be headed by a single parent and Black students attend worse performing schools. Richard V. Reeves & Edward Rodique, *Five Bleak Facts on Black Opportunity*, Brookings Inst. (2015)[15]. Because of social barriers resulting from race, "[m]ore than half of [B]lack adults raised at the bottom of the income scale remain stuck there as adults, compared to a third of [W]hites." Richard V. Reeves, *The Other American Dream: Social Mobility, Race and Opportunity*, Brookings Instit. (Aug. 28, 2013)[16].

One proven remedy to social immobility is education.[17] Improving educational opportunities, in particular the quality of primary education, can increase upward social mobility significantly. *See* Raj Chetty, *Improving Opportunities for Social Mobility in America*, U. Pa. Inst. Urb. Res. (2014)[18] (emphasizing that improving the quality of primary education can increase upward mobility). Increased educational opportunities for minorities at the K-12 level, then, narrows the gap in social mobility between minorities and Whites.

Apart from social immobility, Blacks Americans and other minorities experience discrimination distinct from the plights of poverty. For example, in

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[15] http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/01/15-mlk-black-opportunity-reeves

[16] http://www.brookings.edu/blogs/social-mobility-memos/posts/2013/08/28-social-mobility-race-opportunity-reeves

[17] College educated Americans make, on average, at least 61% more than those with only a high school diploma, *see Earnings and Employment Rate by Educational Attainment*, Bureau Lab. Stat. (April 2, 2015), http://www.bls.gov/emp/ep_chart_001.htm.

[18] http://penniur.upenn.edu/publications/improving-opportunities-for-social-mobility-in-the-united-states

employment, Blacks experience discrimination regardless of their socioeconomic status: resumés with "White names" are 50% more likely than those with "Black names" to receive callbacks, *see* Bertrand Marianee & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 Am. Econ. Rev. 991 (2004),[19] White male job applicants with criminal records are just as likely, if not more, to receive a job than Black males without a criminal record, Devah Pager et al., *Discrimination in Low Wage: A Field Experiment*, 74 Am. Socio. Rev. 777 (Oct. 2009),[20] and the writing of Black law associates is judged more harshly than that of White associates. Arin N. Reeves, *Written in Black and White: Confirmation Bias in Racialized Perceptions of Writing Skills*, Nextions (2014).[21]

Schools aiming to capture in their student body the distinct viewpoints that such discriminatory treatment engenders thus cannot rely on socioeconomic markers alone. Just as universities may consider whether the school's band needs a violin instead of a viola or the basketball team needs a power forward instead of a point guard,[22] they must be allowed to evaluate how a student's race will shape her

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[19] http://www2.econ.iastate.edu/classes/econ321/orazem/bertrand_emily.pdf

[20] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2915472/

[21] http://www.nextions.com/wp-content/files_mf/1415194075201404011 4WritteninBlackandWhiteYPS.pdf

[22] *See* Br. for Nat'l Assoc. Basketball Coaches as *amici curiae* in Support of Resp'ts, *Fisher v. Texas*, No. 11-345, at 24 (Aug. 13, 2013) ("Without . . . diversity of talents and experiences, our teams would surely falter; a team of only point guards would lose every game, even if they were exceptionally talented.").

contributions to a diverse classroom. Ignoring race in admissions prevents schools from achieving real diversity because it leaves out one of the most critical aspects of individual and collective identity and risks excluding vital perspectives from educational communities. Alecia Fedelina Chavez & Florence Guido-DiBrito, *Racial and Ethnic Identity and Development, in* New Directions for Adult & Continuing Education 39 (1999).[23]

B. Relying Solely on Race-Neutral Programs Is Insufficient to Ensure Minorities Have the Opportunity to Obtain Quality Education

Experience shows that when race is removed from consideration and replaced with race-neutral measures of diversity, Blacks and Hispanics suffer a decline in the opportunity to attend selective institutions. Between 1998 and 2003, when Texas universities were not allowed to consider race or national origin in their admissions decisions, but the Ten Percent Plan was in effect, enrollment of Blacks and Hispanics at Texas public universities decreased. One study of the University of Texas and Texas A&M's admissions programs under the Ten Percent Plan, without any racial or ethnic considerations, found that "both Hispanics and [B]lacks witnessed lower admission prospects at both [the University of Texas] and [Texas A&M] after the ban on affirmative action, and reached their lowest point under the top 10% regime." Angel L. Harris & Marta Tienda, *Minority Higher Education Pipeline: Consequences of Changes in College Admissions Policy in Texas*, 627

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[23]http://isites.harvard.edu/fs/docs/icb.topic551690.files/Chavez%20and%20Guido%20Debrito.pdf

Ann. Am. Acad. Pol. Soc. Sci. 60 (2010)[24] (concluding that "Hispanic and [B]lack application rates to the Texas flagship universities fell after affirmative action was banned"). Thus, arguments that racial and ethnic diversity can be achieved through race-neutral policies alone are directly contradicted by data collected in Texas when the only admissions program promoting diversity was the Ten Percent Plan. The Texas Ten Percent Plan, without any consideration of race, "is not able [to] achieve a meaningful increase in ethnic diversity and is therefore not suitable to serve as a complete substitute for affirmative action policies in this dimension." Jason M. Fletcher & Adalbert Mayor, *Tracing the Effects of Guaranteed Admission Through the College Process: Regression Discontinuity Evidence from the Texas 10% Plan*, 32 Contemp. Econ. Pol'y 169 (2014).[25] As Justice Kennedy recognizes, although "[t]he enduring hope is that race should not matter, the reality is that too often it does." *Parents Involved in Cmty. Sch.*, 551 U.S. at 787 (Kennedy, J., concurring).

C. Purportedly Race-Neutral Admission Policies Are Biased Against Blacks and Hispanics

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[24] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3471132/

[25] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3940449/; *See generally* Sean Reardon & Lori Rhodes, *The Effects of Socioeconomic School Integration Plans on Racial School Desegregation*, *in* Integrating Schools in a Changing Society: New Policies and Legal Options for a Multiracial Generation 187-208 (Erica Frankenberg & Elizabeth DeBray eds., Univ. of N.C. Press 2011) (finding socioeconomic considerations for the placement of K-12 students proved to be poor substitutes for the race-based consideration they replace, resulting in higher levels of both racial and socioeconomic segregation)

While admission policies that do not consider the race of candidates are often labeled as "race-neutral," in practice, they hinder educational opportunities for Blacks and Hispanics in a way that they do not for Whites. Although "empirical" admissions criteria, such as standardized tests, GPA and high school curriculum, should be a factor in a holistic admissions program, evidence suggests that they are often biased against minority groups.

For instance, a plethora of studies and literature have illuminated the racial and socioeconomic biases engrained in the SAT. *See generally* Roy O. Freedle, *Correcting the SAT's Ethnic and Social-Class Bias: A Method for Reestimating SAT Scores*, 73 Harvard Ed. Rev. 1 (2003); Maria Veronica Santelices & Mark Wilson, *Unfair Treatment? The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning*, 80 Harvard Ed. Rev. 106 (2010); Ethan Biamonte, *The SAT and Admission: Racial Bias and Economic Inequality*, The People, Ideas, & Things J. (2013).[26]

Additionally, teachers are not immune from implicit biases. A recent study shows that non-Black teachers have considerably lower academic expectations for their Black students. *See* Seth Gershenson et al., *Who Believes in Me? The Effect of Student-Teacher Demographic Match on Teacher Expectations*, Upjohn Inst. (2015).[27] An author of that report emphasized that "systematic biases in teachers' expectations for student success might contribute to persistent socio-demographic gaps in educational

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[26]http://pitjournal.unc.edu/fall2013/sites/default/files/satinequality.pdf

[27]http://research.upjohn.org/cgi/viewcontent.cgi?article=1248&context=up_workingpapers

achievement and attainment." Seth Gershenson, *The Alarming Effect of Racial Mismatch on Teacher Expectations*, Brookings Inst. (Aug. 2015).[28] Additionally, lowered expectations, coupled with implicit racial biases and stereotypes, results in a disproportionate number of Black students being referred to special education programs and/or deemed cognitively deficient. Ama Mazama, *Racism in Schools is Pushing More Black Families to Homeschool Their Children*, Wash. Post (Apr. 10, 2015)[29] ("Although they only make up 17 percent of the student population, they nonetheless represent 33 percent of those enrolled in programs for the mentally challenged."). Additionally, lowered expectations for minority students negatively affect their GPA. *See, e.g.*, Civ. Rts Data Collection Data Snapshot: School Discipline (March 2014)[30] (finding that students of color are disproportionately suspended and expelled); Mazama, *supra* (noting that, while Black students make up 17 percent of the student population, they account for 34% of all suspensions). A minority's GPA, then, reflects more than a color blind assessment of academic performance, but carries racial biases not reflected in the numbers.

Finally, universities' evaluation of an applicant's high school curriculum, while seemingly objective, is biased against minority students from poor neighborhoods, who have considerably less access to Ad-

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[28] http://www.brookings.edu/blogs/brown-center-chalkboard/posts/2015/08/18-teacher-expectations-gershenson

[29] https://www.washingtonpost.com/posteverything/wp/2015/04/10/racism-in-schools-is-pushing-more-black-families-to-homeschool-their-children/

[30] http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf

vanced Placement and other high-level classes. *See* Civ. Rts Data Collection Data Snapshot: College and Career Readiness (March 2014).[31]

The argument that admissions programs that take into account factors with statistically demonstrated racial biases are "race-neutral" is, at best, misguided. Justice Ginsburg phrased this dilemma in schools using "race-neutral" alternatives best in her *Fisher I* dissent: "I have said before and reiterate here that only an ostrich could regard the supposedly neutral alternatives as race unconscious." *Fisher v. Univ. of Tex. (Fisher I)*, 133 S. Ct. 2411, 2433 (2013) (Ginsburg, J., dissenting).

D. Respondents' Holistic Approach Is Consistent with the Individualized Consideration that a Compelling Interest Requires

Central to this Court's proposition that "diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element," *Fisher I*, 133 S. Ct. at 2418 (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S., 265, 315 (1978).), is the notion that schools must strive to assemble a class of "students who have different racial backgrounds but also those who have had different experiences, in light of those backgrounds." Elise Boddie, *Commentary on Fisher:*

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31 http://www2.ed.gov/about/offices/list/ocr/docs/crdc-college-and-career-readiness-snapshot.pdf; Additionally, minorities may be disadvantaged by the "Eurocentric" curriculum—which focuses almost exclusively on European history and culture, not the history of other cultures—present in American schools. *See also* Mazama, *supra*. The underrepresentation of minorities' history in school curriculum make minority students less engaged and exacerbate their lower educational achievement.

The Importance of Diversity Within Diversity, SCOTUSBlog.com (Oct. 11, 2012).[32] A multidimensional approach to diversity "aim[s] not only to increase minority representation overall, but also to increase diversity within racial groups." Vinay Harpalani, *Diversity Within Racial Groups and the Constitutionality of Race-Conscious Admissions*, 15 U. Pa. J. Const. L. 464, 466-67 (2013). As this Court recognized, "the strength of the admissions program upheld in *Grutter* was that it 'focused on each applicant as an individual, and not simply as a member of a particular racial group.'" Boddie, *supra* (quoting *Grutter*).

Respondent's holistic admissions program is faithful to "the principle that a university admissions program may take account of race as one, nonpredominant factor in a system designed to consider each applicant as an individual. . .." *Grutter v. Bollinger*, 539 U.S. at 387. Furthermore, it is consistent with this Court's requirement of individualized consideration because it "[f]ocus[es] on each applicant as an individual, and not simply as a member of a particular racial group." *Parents Involved in Cmty. Sch.*, at 722. The flexibility in respondent's policy allows it to recognize "that Asians are a diverse population category that includes newer and older, as well as relatively affluent and relatively impoverished groups" rather than branding Asians as a uniform group of model minorities, *see* John R. Logan & Weiwei Zhang, *Separate but Equal: Asian Nationalities in the U.S.* 15 US2010 Project (2013);[33] examine the

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[32]http://www.scotusblog.com/2012/10/commentary-on-fisher-the-importance-of-diversity-within-diversity/

[33]http://www.s4.brown.edu/us2010/Data/Report/report06112013.pdf

diverse origins and trajectories of the many groups that make up the large Hispanic category, which includes groups experiencing economic success and moderate integration, such as Cubans and South Americans, as well as segregated groups struggling economically, such as Dominicans, *see* John R. Logan and Richard N. Turner, *Hispanics in the United States: Not Only Mexicans* 12-13, US2010 Project (2013);[34] and discern when Black immigrants maintain their distinct ethnic identities rather than assimilating into the African-American ethnic community. *See* Leonard M. Baynes, *Who Is Black Enough for You? The Stories of One Black Man and His Family's Pursuit of the American Dream*, 11 Geo. Immig. L.J. 97, 108 (1996).[35]

Unlike the Ten Percent Plan, which relies on segregation to admit racial minorities from racially isolated schools in poor communities, holistic approaches that consider race and create multidimensional diversity counter stereotypes that minorities come from poor backgrounds and rarely achieve professional success. As this Court recognized in *Grutter*, "when a critical mass of underrepresented minority students is present, racial stereotypes lose their force because nonminority students learn there is no 'minority viewpoint' but rather a variety of viewpoints among minority students." *Grutter*, 539 U.S. at 319–20; *see also*, Devin W. Carbado, *Intraracial Diversity*, 60 UCLA L. Rev. 1130, 1164 (2013)[36] ("The greater the intraracial diversity, the greater

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[34]http://www.s4.brown.edu/us2010/Data/Report/report03202013.pdf

[35]http://heinonline.org/HOL/Page?handle=hein.journals/geoimlj11&div=11&g_sent=1&collection=journals

[36] http://www.uclalawreview.org/pdf/60-5-2.pdf

the range of racial experiences. The greater the range of racial experiences, the greater the range of ideas. This is the sense in which intraracial diversity can render the robust exchange of ideas rationale for affirmative action even more compelling.").

Only with an eye to multidimensional diversity can schools address this Court's concern that "[w]hile the [Top Ten Percent] Law may have contributed to an increase in overall minority enrollment, those minority students remain clustered in certain programs." *See Fisher I* at 240; *see also* Harpalani, *supra* 525 at n.278,

> ("The advantage of an individualized, holistic race conscious policy is that it does allow student majors and academic interests to be considered in admissions, and an admissions committee can target those majors that are underrepresented. This would be more difficult with a non-individualized process, such as the Top Ten Percent Law.").

Thus, a focus on multidimensional diversity allows a school to consider the areas of diversity in which it is particularly weak and to pursue students that can improve the school's overall diversity. *See* Carbado, *supra*. Furthermore, it permits schools to admit minority students from racially integrated schools that may not be in the top ten percent of their class, but have unique viewpoints and experiences that will enrich classroom dialogue. This, in turn, "advance[s] the University's educational mission by helping to defeat racial stereotypes that all minorities have experience and perspectives that are functionally indistinguishable." Boddie, *supra*.

III. THE UNINTENDED CONSEQUENCES OF PURPORTEDLY RACE-NEUTRAL ALTERNATIVES WILL DECREASE THE QUALITY OF K-12 EDUCATION

A restriction on universities' ability to consider race in their admissions programs will negatively impact students in K-12 schools. First, while the Ten Percent Plan promotes some diversity in college admissions, relying solely on the Ten Percent Plan to achieve racial diversity at the university level promotes segregation in K-12 schools and may discourage minority students in poor performing schools from seeking other higher quality schools. Moreover, the rigidness of race-neutral admission policies like the Ten Percent Plan opens the door to gamesmanship, whereby students from high-achieving schools transfer to low-achieving schools to increase their chances for admission to selective universities. Finally in the long term, removing race from admissions programs' diversity criteria will diminish opportunities for higher education to minorities, which in turn reduces the number of qualified minority teachers and mentors to serve communities with diverse K-12 schools.

A. Programs Like Texas' Ten Percent Plan Are Dependent on Segregated High Schools and Cannot Be Used as a Sole Means of Achieving Meaningful Diversity.

The Ten Percent Plan may have an admirable goal. Yet, despite their aim to achieve racial diversity in public universities, percent plans, such as the Ten Percent Plan adopted by Respondents are dependent on, and promote, segregated high schools. In fact, Texas adopted the Ten Percent Plan in reli-

ance on the widespread racial segregation in its neighborhoods and schools. *See* House Research Organization Bill Analysis HB 588, at *4–5 (Tex. 1997)[37]

> ("Many regions of the state, school districts, and high schools in Texas are still predominantly composed of people from a single racial or ethnic group. Because of the persistence of this segregation, admitting the top 10 percent of all high schools would provide a diverse population and ensure that a large, well-qualified pool of minority students was admitted to Texas universities.");

see also Resp'ts Br., 7 ("The racial diversity that the law does add is largely a product of the well-known fact that the Texas school system remains largely segregated"). As Kahlenberg notes, the Texas Ten Percent Plan produced racial and ethnic diversity because it "leveraged the unfortunate reality of residential and high school segregation by race and class." Richard D. Kahlenberg, *The Future of Affirmative Action: New Paths to Higher Education Diversity after Fisher v. University of Texas* (2014).[38] Percent plans thus achieve "access and diversity in universities . . . at the price of continued segregation in high schools," which is inconsistent with society's aim of desegregation. Benjamin Forest, *Affirmative Action – and Reaction; A Policy That Depends on Segregation*, N.Y. Times (Mar. 29, 2003);[39] *see also*

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[37] http://www.lrl.state.tx.us/scanned/hroBillAnalyses/75-0/HB588.pdf

[38] http://www.tcf.org/assets/downloads/FOAA.pdf

[39] http://www.nytimes.com/2003/03/29/opinion/affirmative-action-and-reaction-a-policy-that-depends-on-segregation.html

U.S. Comm'n on Civ. Rts, *Toward an Understanding of Percentage Plans in Higher Education: Are They Effective Substitutes for Affirmative Action?* (Apr. 2000)[40] (discussing the weaknesses of percentage plans including that they are contingent upon continued racial segregation of the nation's high schools).

An admissions program that relies only on the Ten Percent Plan "counteracts the goals of school integration by disadvantaging minority students who attend integrated schools while privileging those who attend 'majority minority' schools." Nicholas Webster, *Analysis of the Texas Ten Percent Plan*, Kirwan Instit. for the Study of Race & Ethnicity (2007).[41] Research from the Texas Higher Education Opportunity Project at Princeton University found that "...[B]lack and Hispanic students who attend integrated schools are *less* likely than White and Asian students at these schools to qualify for the admissions guarantee. . . [B]lack and Hispanic top decile students who enrolled at flagships largely hail from high schools where minorities predominate." *Id.* The results remain the same even when family socioeconomic background is controlled for. *Id.* Thus, "[al]though the architects of the Top Ten Percent Plan certainly did not intend to undermine integration, they 'capitaliz[ed] on segregation' and the contours of race and class to achieve their results, perhaps mitigating any advantages." *Id.*

Furthermore, because not all areas of the country are as segregated as Texas, the Ten Percent Plan will not achieve diversity everywhere it is imple-

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[40] http://www.usccr.gov/pubs/percent/stmnt.htm

[41] http://kirwaninstitute.osu.edu/wp-content/uploads/2012/05/Texas-Ten-Percent_style.pdf

mented. Regents of the Univ. of Michigan, *Reasons Why 'Percent Plans' Won't Work For College Admissions Nationwide* (2003).[42] Moreover, "with school integration receding to pre-Civil Rights era levels, we risk cutting off the educational pipeline for many minorities before they even reach high school." *Id.*

B. Preventing Universities from Considering Race Will Discourage Minority Students from Attending Competitive Racially Integrated K-12 Schools

Disrupting Texas universities' current admissions scheme and relying solely on the Ten Percent Plan would create the perverse incentive for minority students to remain in underperforming, segregated schools in order to gain college admission.

Texas' current admissions policy allows minority students to attend the best K-12 schools available whether they be public, private or charter. Minority students attend competitive, racially integrated schools with the expectation that Texas' holistic admissions process will acknowledge the obstacles posed by race, and consider the multidimensional diversity they bring to the classroom. A ruling limiting the use of race would disrupt that expectation and provide a disincentive to attend diverse competitive schools. *See* Julie Berry Cullen et al., *Jockeying For Position: Strategic High School Choice Under Texas' Top Ten Percent Plan* 21-22, Nat'l Bureau Econ. Research (2010).[43]

Additionally, students that remain in segregated schools to gain admission through Texas' Ten Per-

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[42] http://ns.umich.edu/Releases/2003/Jan03/r012903.html

[43] http://www.cmc.edu/sites/default/files/lowe/events/Cullen_SCCAM2010.pdf

cent Plan may be discouraged from partaking in a well-rounded educational experience including drama, music, athletics and other extracurricular activities because the Ten Percent Plan considers only GPA. Students are also likely to shy away from challenging classes, and will instead fill their curricula with the bare minimum to guarantee a high ranking. This is in direct contrast to K-12 educators' mission of providing students with a diverse, well-rounded education that gives students a variety of knowledge, perspectives and skills.

C. Inflexible Race-Neutral Alternatives Incentivize Gamesmanship

Current alternatives to holistic review of applicants lack the flexibility to adjust as behaviors change in response to the programs. Mark C. Long, *Is there a "Workable" Race-Neutral Alternative to Affirmative Action in College Admissions?*, 34 J. Policy Analysis & Mgmt. 162, 181 (2014)[44] (noting that students in Texas "behaved strategically in response to the [Ten Percent Plan] by shifting their enrollment toward high schools where they had a better chance of landing in the top [ten] percent."). Because the goal is divorced from the means used to pursue it, ostensibly race-neutral alternatives, like the Texas Ten Percent Plan, are vulnerable to cynical gamesmanship. For instance, students with sufficient resources have subverted the goals of the Ten Percent Plan by seeking transfer to schools with lower top ten percent thresholds to increase their chances of being admitted to selective public universities. Julie Berry Cullen et al., *supra* at 19. If universities are only allowed to promote diversity

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[44] http://onlinelibrary.wiley.com/enhanced/doi/10.1002/pam.21800/

through the Ten Percent Plan, diversity may come at the expense of students forgoing opportunities to attain the best education possible at all levels.

D. The Number of Racially Diverse Teachers Will Decrease at K-12 Schools

Classrooms with students of diverse backgrounds—both racially integrated and predominantly minority—are best instructed by diverse teachers. A ruling that restricts the ability of universities to consider race will decrease the number of diverse teachers at K-12 schools.

Researchers have identified five distinct benefits of diverse teachers instructing at the K-12 level: (1) K-12 schools with a high level of minority students generally have high teacher turnover. Because minority teachers are often more familiar with the communities in which these K-12 schools are located, teacher turnover is reduced through employing diverse teachers. (2) Evidence supports the conclusion that diverse teachers improve the academic performance of minority students. (3) Diverse teachers provide minority students with college-educated role models. (4) Teachers of color regularly have higher expectations for minority, in particular Black, students than White teachers. (5) Students of all races and ethnicities benefit from having teachers of diverse backgrounds as it reduces implicit bias and provides role models of all races for students. Albert Shanker Inst., *The State of Teacher Diversity in American Education* 6-9 (2015);[45] *see also* Nat'l Collaborative on Diversity in the Teacher Force, *Assessment of Diversity in America's Teaching Force* 6

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[45]http://www.shankerinstitute.org/sites/shanker/files/The%20State%20of%20Teacher%20Diversity_0.pdf

(2004),[46] (emphasizing that students benefit from interactions with role models that share their experiences and learning from teachers of varied backgrounds); *see also* Robert W. Fairlie et al., *A Community College Instructor Like Me: Race and Ethnicity Interactions in the Classroom*, Nat'l Bureau Econ. (2011)[47] (finding that "the performance gap in terms of class dropout rates, pass rates and grade performance between white and underrepresented minority students falls by 20-50 percent when taught by an underrepresented minority instructor.").

Universities that are restricted in their ability to consider race in admissions generally admit fewer students of color than schools that are allowed to consider race as a part of a holistic admissions approach. *See, e.g.*, Ford Fessenden & Josh Keller, *How Minorities Have Fared in State With Affirmative Action Bans*, N.Y. Times (June 30, 2015)[48]

> ("Hispanic and [B]lack enrollment at the University of California, Berkeley, and the University of California, Los Angeles dropped sharply after voters approved a statewide ban on affirmative action . . . [Texas'] flagship universities each enrolled fewer [B]lack and Hispanic students after a court ruling prohibited them from using affirmative action . . . After Michigan voters approved a ban on affirmative action, the number of [B]lack freshmen declined at the two most prominent public universities . . . Minority enrollment fell at the

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[46] http://www.ate1.org/pubs/uploads/diversityreport.pdf

[47] http://www.nber.org/papers/w17381.pdf

[48] http://www.nytimes.com/interactive/2013/06/24/us/affirmative-action-bans.html?_r=0

University of Washington after voters approved a ban on affirmative action.").

When fewer students of color are admitted to universities, the pool of future teachers of color is restricted.[49] If colleges and universities are no longer permitted to consider applicants' race as part of a narrowly-tailored, holistic admissions process to attain diversity, they will enroll and graduate, fewer minority students. Such a development would impede the efforts of programs like Teach For America, in Texas and across the nation, to address the crisis in K-12 education by recruiting and training a diverse and talented corps of teachers and education leaders. It similarly prevents K-12 educators, such as the Calhoun School, City and Country School and individual *amici*, from hiring a diverse teaching cadre. The educational experience of K-12 students in diverse classrooms is thus diminished by the dearth of teachers with diverse backgrounds.

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[49] Constraints on race-conscious admission policies will also restrict the pipeline of diverse, college-educated community members living in the neighborhoods with large minority populations, which will decrease the presence of community mentors to students attending K-12 schools in those neighborhoods.

CONCLUSION

For all the foregoing reasons, the Court should uphold Respondents' admissions policy and permit the consideration of race as one factor in a holistic assessment of individual students.

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